

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Ashford et al. (PCT Patent Application Publication WO 02/076212). Instant claim 1 recites a method, and the only method step recited is the incorporation of an alginate into a bipyridylium herbicide containing composition. Instant claims 2-15 recite further limitations to the ingredients present in this composition.

Ashford et al. discloses aqueous herbicidal compositions comprising a salt of paraquat and/or diquat with a gelling agent such as an alginate (page 2, line 29 – page 3, line 2). A specific example disclosed by Ashford et al. comprising 200 g/L paraquat dichloride, 5 g/L of the alginate sold under the trade name MANUTEX RM, the surfactant magnesium dodecyl benzene sulfonate, an emetic, and a purgative (page 12, example 1). This alginate has an average molecular weight of 120,000 to 190,000 and has a 1% viscosity of from 200 to 400 mPas (page 6, table). The composition is prepared by adding the alginate to an aqueous mixture of the bipyridylium salt (page 11, lines 26-30). Thus, Ashford et al. discloses the method recited by instant claims 1-15.

Art Unit: 1619

Instant claim 1 also recites that there is dermal protection following contact between the skin and the bipyridylium-containing composition. Ashford et al. does not recognize that the composition provides dermal protection. However, the claims recite a method comprising incorporating an alginate into the bipyridylium herbicide-containing composition. The body of the claim recites a structurally complete invention, and this recited property in the preamble does not appear to result in a structural difference between the claimed invention and the prior art. And if the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. See MPEP 2111.02(II). Thus, Ashford et al. anticipates the method recited by instant claims 1-15.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Gullledge whose telephone number is (571) 270-5756. The examiner can normally be reached on Monday-Thursday 6:00am - 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1619

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BMG

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612